

Question

A pregnant employee has come to us with a medical certificate stating that she is unfit for work. She has requested to take this as paid sick leave. Should we grant her paid sick leave, or should she take special unpaid maternity leave instead?

ANSWER *An employee may use her accrued personal leave due to pregnancy-related illnesses.*

Under the National Employment Standards, you can only require an employee to take unpaid parental leave if:

- *the employee has complied with the notice and evidence requirements for unpaid parental leave;*
- *the transfer to a safe position provisions do not apply; and*
- *during the 6 week period before the expected birth of the child, you asked the employee to provide a medical certificate stating whether or not she was fit for work and, if so, whether she should or should not continue in her position. If the employee does not comply with this request within 7 days or the medical certificate says that the employee should not continue, you can require the employee to take unpaid parental leave.*

If an employee has not been directed to take unpaid parental leave, then they would be entitled to take personal leave (paid or unpaid).

Remember, an employee has a separate entitlement to take unpaid special maternity leave if they have a pregnancy-related illness. An employee needs to give notice of their absence and the expected duration. The employee may also be required to give evidence that would satisfy a reasonable person that she has a pregnancy-related illness. However, this entitlement exists alongside an employee's entitlement to take paid personal leave, which an employee may elect to take instead.